

THE STATE OF MISSOURI EX
REL. ERIC SCMITT

Plaintiff(s),

VS.

SAM PAGE, ET AL

Defendant(s).

Cause No. 21SL-CC03334

Division 18

FILED
08/19/21
JOAN M. GILMER
CIRCUIT CLERK
ST. LOUIS COUNTY, MO

COURT ORDER

Cause was called on August 17, 2021 for Plaintiff's Motion for a Preliminary Injunction against Defendant Page, Defendant Khan and Defendant St. Louis County Department of Public Health. The parties appeared by and through counsel. The court took argument on the motion and now being fully apprised in the matter does hereby find:

1. As the court found in the August 3, 2021 Temporary Restraining Order this court is tasked with determining whether the July 27, 2021 vote of the St. Louis County Council terminating the Face Covering Order issued on July 26, 2021 is authorized under Section 67.265 RSMO a newly enacted State Statute.
2. As it stands the residents of St. Louis County are caught between the July 26, 2021 Face Covering Order and the July 27, 2021 majority vote of the St. Louis County Council to terminate the Face Covering Order. In determining whether or not to enter a preliminary injunction the court has to look to the factors set out in *State ex rel. Director of Revenue, State of Missouri v Gabbert* 925 S.W. 2d 838. Those factors are 1. the likelihood of success on the merits of the claim 2. the irreparable harm to the movant and 3. the balance of the harm and the injury that the injunction would cause on other interested parties and the public interest.
3. This courts decision is purely one of the relevant laws. The court notes that the COVID-19 Pandemic has been a political issue since it first emerged in this Country and has continued to be a political flash point for many. The court implored for the parties to work together for the benefit of the public to find

common ground as this virus continues to be a very real and significant danger to the State of Missouri, St. Louis County, and the World. Both sides agree that the increase in COVID 19 cases is significant and of great concern, they agree that people should take appropriate precautions to stop the spread of the virus.

Despite agreeing on these issues they are unable to resolve their dispute.

4. The court notes that after the Courts August 3, 2021 ruling that victory was claimed despite the court's clear and unambiguous statement that the only victory is when the citizens of this State and County are no longer at risk of illness and death at the hands of the COVID-19 virus. In a time where our hospitals are near or at capacity in their ICU's from COVID-19 patients, where surgical procedures are once again being put off due to the strain on our hospitals from COVID-19 patients and people are being infected at rates significantly higher than many other areas of our Country how can one claim victory.
5. The court finds there is a likelihood of success on the merits that Section 67.265 RSMO gives the St. Louis County Council the authority to terminate the July 26, 2021 Face Covering Order issued by the County Defendants. The St. Louis County Council is the governing body for St. Louis County. The July 26, 2021 Face Covering Order is a public health order issued by a political subdivision as defined by Section 67.750 RSMO. The July 26, 2021 Face Covering Order was issued in response to the COVID-19 virus which is an actual threat to public health and issued for the purpose of preventing the spread of a contagious disease, COVID-19. The County Defendant's have argued to the court a number of claims that Section 67.265 RSMO is unconstitutional however the court is not persuaded that Section 67.265 RSMO is unconstitutional.
6. The court further finds the Plaintiff have met their burden as to is irreparable harm. The County Defendant's argue to the court in their pleadings as well as in their argument that the court cannot find irreparable harm in that they have previously not enforced the mandate and that they have no intention on enforcing the July 26, 2021 Face Covering Order, unless in extreme circumstances. It is difficult to understand why the County Defendants maintain a mandate is necessary if those tasked with enforcing it have no intention to do so, invariably making a mandate merely a recommendation. The County Defendants argue that they require the mandate for people to comply with wearing masks in public



places but by their own admission it is a hollow threat which is unlikely to garner compliance if they have no intention to enforce. Currently we have two co-equal branches of government for St. Louis County at odds with one another. The executive branch states there is a mandatory requirement for the use of face covering in public as outlined in the July 26, 2021 Face Covering Order. The legislative branch on July 27, 2021 voted by a 5 to 2 vote to terminate the July 26, 2021 Face Covering Order. St. Louis County Defendant's argue that the court cannot find that conflict of rulings to be irreparable harm. Where one branch of the government lays claims to have the power to sanction a citizen over the violation of a Face Covering Order and another branch has lawfully voted to terminated that order to suggest that leaving things as they are without court intervention would lead to absurd results.

7. In balancing the harm of entering a preliminary injunction versus the harm from failing to act the court has considered the interests of those who will be impacted by the court's decision and the public interest. The court in imposing a preliminary injunction will allow the citizens of St. Louis County to have a clear statement as to their legal obligations and rights with regards to face coverings, although it remains the court's hope that our citizens will respect one another and where appropriate wear face coverings to protect themselves and others from the highly contagious COVID-19 virus. There is a great public interest in protecting the citizens from a highly transmissible and deadly virus. In the past states have seen fit to require such vaccinations to stop such diseases as polio, measles, mumps, and meningitis for students to attend school. In doing so they were protecting the health of their communities. Here the County Defendants seek to use a mask mandate, that they have stated they do not intend to enforce except in extreme circumstances to protect people from the COVID-19 virus despite the County Council's termination of the Face Covering Order. The court finds that the balance of the harms weighs in favor of the Plaintiff.
8. This court hereby enters a preliminary injunction order against Defendant Page, Defendant Kahn, and the St. Louis County Department of Public Health. These Defendants are temporarily enjoined from taking any and all action to enforce the July 26, 2021 Face Covering Order. Further this court orders the County Defendants to include on any and all media, social media, websites, news, and all

other relevant signage where the July 26, 2021 Face Covering Order is located a copy of this court's preliminary injunction order.

Wherefore for the reasons stated above this court hereby enters a preliminary injunction order against Defendant Page, Defendant Kahn, and Defendant St. Louis County Department of Public Health to enjoin these defendants from taking any and all action to enforce the July 26, 2021 Face Covering Order. The court hereby orders Defendant Page, Defendant Kahn and Defendant St. Louis County Department of Public Health to include on any and all media, social media, websites, news, and all other relevant signage where the July 26, 2021 Face Covering Order is located a copy of this court's preliminary injunction order.

SO ORDERED:

 
Judge Division 18

August 19, 2021

Nellie Ribaud
Circuit Judge, Division 18

cc: to all other parties, through counsel of record, via the court's electronic filing system.